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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 590

ROBERT GRAHAM GRAY,

Petitioner,

v.

MARIE GRAY PORTER,
(FORMERLY MARIE K. GRAY),

Respondent.

(ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND)

BRIEF IN OPPOSITION

MARIE GRAY PORTER,
Proper Person,
P.O. Box 833,
Cumberland, Md. 21502.

The Daily Record Co., Baltimore, Md. 21203

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STATEMENT OF THE CASE

The Court is respectfully referred to the per curiam opinion of the Court of Appeals of Maryland, which is printed in the brief for the Petitioner in these proceedings on page 3a of the Appendix, and which is hereby incorporated herein by reference, and which this Respondent adopts as its statement of the case.

QUESTIONS PRESENTED

I. Whether or not a case in a state court in which no federal question was raised at any point in the proceedings may justify the granting of a Writ of Certiorari by this Court.

II. Whether or not a person who slept on his rights for seven years and the position of the parties markedly changed is entitled to a Writ of Certiorari to review said cause.

STATEMENT OF FACTS

The Respondent herein, Marie K. Gray Porter, then Marie K. Gray, instituted a divorce action in the Circuit Court for Allegany County, Maryland, and service against him was obtained by order of publication and a decree pro-confesso was duly entered against him on April 11, 1956, and testimony taken pursuant thereto.

Subsequently, leave of court was obtained and an answer was duly filed by counsel on behalf of the Petitioner on May 10, 1956. The case was set for hearing in the Circuit Court for Allegany County, Maryland, on July 29, 1957, and was heard on said date as is shown by the memorandum opinion of the Honorable Morgan C. Harris filed in the said cause on July 29, 1959, as is shown by a copy of the docket entries in the case, certified under Act of Congress and printed in the Appendix hereto.

The Petitioner sent the following telegram from Norfolk, Virginia, to Judge Morgan C. Harris:

PLAINTIFF'S EXHIBIT B

WESTERN UNION TELEGRAM

PA007 RA003 1957 Jul 20 AM 6 45

R NFA331 NL PD—Norfolk Vir 28—

JUDGED CIRCUIT COURT
WASHINGTON ST. (DLR BEFORE 930AM)—

Cumberland, Md.

JUDGE YOUR HONOR PLEASE POSTPONE MY DIVORCE CASE UNTIL ANY DATE AFTER LABOR

DAY IN ORDER FOR ME TO DEFINE MY CONSTITUTIONAL RIGHTS OF LAW, AND I REQUEST ATT. RYAN ALSO—

ROBERT GRAHAM GRAY 723 WEST 26th St.
NORFOLK VIR

This conclusively shows that the Petitioner who sent a telegram from Norfolk at 6:45 A. M., could not have been present on the same morning in Cumberland, which is more than three hundred miles away.

A decree a vinculo matrimonii was duly signed by the Court on July 30, 1957, and the Petitioner herein received notice of that decree on or about August 3, 1957, and attempted to take an appeal to the Court of Appeals of Maryland, which appeal was never perfected.

On July 21, 1964, a petition was filed in said cause to revise the final judgment of the Court entered on July 30, 1957, which was heard by the Circuit Court and following a decree against him, an appeal was taken to the Court of Appeals of Maryland. Upon a hearing, the said appeal was dismissed. The petition for Writ of Certiorari was then filed in this Court. No federal question was raised in either of the aforesaid hearings.

ARGUMENT

The Respondent objects to the issuance of this Writ of Certiorari and objects to the jurisdiction of the Court to grant it upon the ground that the brief filed by the Petitioner is fatally defective in that it does not comply with Rule 23 1 (f), of this Court which rule requires that "the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal question sought to be reviewed were raised; the method of

raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court."

It is respectfully submitted that at no stage of the proceedings was any federal question raised; hence, the inability of the Petitioner to comply with the above rule and, therefore, the petition is fatally defective and the Writ should not issue.

During the interim from the granting of the divorce and the filing of the petition to revise the decree, the Respondent remarried and was widowed. If it were to be held that after such a long period of time, a decree could be set aside, then this would make a bigamist of the Respondent, and no person could rely upon a decree duly issued and enrolled. There can be no question that the granting of the divorce was proper and that the Respondent had every right to rely upon it. Particularly, is this true in the failure of the Petitioner to perfect his appeal, which he attempted to take.

The Petitioner had at that time every means available to have the matter decided as to whether or not there had been a proper hearing and whether or not the court was correct in granting the divorce.

That the hearing was held on July 29, 1957, cannot be questioned as is conclusively shown by the docket entries (1a). The memorandum opinion of the Court was filed on that day and the final decree the following day.

It is further respectfully submitted that had the case been set for July 29 and continued until July 30, the Petitioner would have had such notice had he appeared in court on July 29; and at all events, he was represented in said hearing by his own counsel, counsel which he named in his telegram to Judge Harris on July 29.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

MARIE GRAY PORTER,
Proper Person,
P.O. Box 833,
Cumberland, Md. 21502.